

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pinellas Park, FL, Employer**

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**Docket No. 12-1770  
Issued: February 1, 2013**

*Appearances:*

*Capp P. Taylor, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 14, 2012 appellant, through her attorney, filed a timely appeal from a May 24, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that she had any employment-related disability beginning December 5, 2005 causally related to the conditions accepted by OWCP on November 12, 2009 of cervical sprain, lumbar sprain or bilateral carpal tunnel syndrome.

On appeal, appellant's attorney asserts that appellant is entitled to disability compensation for the period claimed, based on the opinions of her attending physician and that of an OWCP referral physician.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

This case has previously been before the Board. In a November 13, 2008 decision, the Board found that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on December 5, 2005 causally related to an October 1, 2004 employment injury.<sup>2</sup> In a March 13, 2012 decision, the Board found that the case was not in posture for decision regarding whether she established that she was totally disabled beginning on December 5, 2005 due to her accepted conditions and remanded the case to OWCP. On remand OWCP was to ask Dr. William Dinenberg, a Board-certified orthopedic surgeon and OWCP referral physician, to furnish a supplementary report regarding whether the restrictions that he provided in both the body of his October 16, 2009 report and on an attached work capacity evaluation were due to the conditions of cervical and lumbar sprains and/or bilateral carpal tunnel syndrome accepted as employment related on November 12, 2009 or whether the restrictions were due to conditions that had not been accepted by OWCP, such as diagnosed left shoulder impingement. Dr. Dinenberg was to further provide an opinion as to whether appellant was totally disabled beginning on December 1, 2005 solely due to the accepted conditions. After this and such further development deemed necessary, OWCP was to issue an appropriate decision.<sup>3</sup> The law and facts of the previous Board decisions are incorporated herein by reference.

Dr. Harish J. Patel, an attending neurologist, furnished a number of treatment notes dated July 2, 2010 to April 13, 2012 in which he reported his physical examination findings and diagnosed headaches, cervical and lumbosacral radiculopathy with pain and depression. A September 21, 2011 nerve conduction study of the lower extremities demonstrated abnormal activity indicative of tibial and peroneal neuropathies and lumbosacral radiculopathies.<sup>4</sup>

In April 2012 OWCP referred appellant to Dr. Dinenberg for a second-opinion evaluation. Dr. Dinenberg was asked to clarify whether the restrictions he provided in his October 16, 2009 report were due to the employment injury and whether appellant was disabled

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<sup>2</sup> Docket No. 08-1393 (issued November 13, 2008). The October 1, 2004 injury, adjudicated by OWCP under file number xxxxxx718, occurred when appellant tripped on an uneven pavement. The claim was accepted for an open wound and contusion to the right knee and strains to the left ankle, left knee and left wrist. Appellant filed the instant occupational disease claim, adjudicated by OWCP under file number xxxxxx416, on December 15, 2008. On November 12, 2009 OWCP accepted that appellant sustained a work-related cervical sprain, lumbar sprain and bilateral carpal tunnel syndrome and on November 20, 2009 she filed a claim for compensation beginning December 1, 2005. By decision dated May 2, 2011, appellant was granted a schedule award for a five percent impairment of the right upper extremity and a five percent impairment of the left upper extremity. In an October 5, 2011 decision, OWCP denied her claim for a schedule award for the lower extremities.

<sup>3</sup> Docket No. 11-490 (issued March 13, 2012).

<sup>4</sup> Counsel requested that OWCP additionally accept lumbar radiculopathy. OWCP continues to develop this issue.

on December 1, 2005 due to the accepted conditions.<sup>5</sup> In a May 7, 2012 report, he noted his review of the statement of accepted facts and medical record. Dr. Dinenberg noted tenderness on examination of the cervical and lumbar spine and positive Phalen's test, Tinel's sign and carpal compression tests bilaterally. He diagnosed cervical and lumbar sprain and strain and bilateral carpal tunnel syndrome. A May 8, 2012 study of the upper and lower extremities was normal, with no electrical evidence of carpal tunnel syndrome or cervical or lumbar radiculopathies. In an addendum report dated May 10, 2012, Dr. Dinenberg advised that the only restriction he provided in October 2009 for a nonwork-related condition was that of reaching above the left shoulder. He stated that all other restrictions were for the accepted conditions. Dr. Dinenberg further opined that he did not feel that appellant was totally disabled on December 1, 2005 but did have restrictions secondary to the accepted conditions beginning on that date.

By decision dated May 24, 2012, OWCP denied appellant's claim for disability compensation beginning on December 1, 2005 and continuing on the grounds that the medical record did not support disability.

### **LEGAL PRECEDENT**

Under FECA the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>7</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.<sup>8</sup> Whether a particular injury causes an employee to be disabled for employment and the duration

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<sup>5</sup> In his October 16, 2009 report, Dr. Dinenberg provided examination findings and diagnosed work-related cervical sprain/strain, lumbar sprain/strain and bilateral carpal tunnel syndrome and nonemployment-related left shoulder impingement, minimal disc herniation at L5-S1 and minimal disc herniation at C2 through C6. He noted that appellant's subjective complaints outweighed her objective findings but that she had work-related residuals of the cervical and lumbar spine, including loss of range of motion and tenderness and that the hands had decreased sensation. Dr. Dinenberg advised that appellant was at maximum medical improvement for the cervical and lumbar sprains but not at maximum medical improvement for bilateral carpal tunnel syndrome and recommended carpal tunnel release. He provided temporary restrictions of no overhead work with the left shoulder and no lifting greater than 20 pounds and advised that appellant could not perform the duties of a letter carrier and would need a primarily sedentary position. Dr. Dinenberg provided permanent restrictions of no reaching above the shoulder and no bending, stooping, squatting, kneeling or climbing. He indicated that appellant could repetitively move her wrists for one hour daily and could push, pull and lift 20 pounds for two hours daily.

<sup>6</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>7</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>8</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>10</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision. In reports dated October 16, 2009 and May 7 and 12, 2012, Dr. Dinenberg advised that appellant continued to have residuals of the accepted cervical and lumbar strains and carpal tunnel syndrome. In his October 16, 2009 report, he advised that she could not perform her regular job duties as a letter carrier and would need a primarily sedentary position with permanent restrictions, which he described.<sup>12</sup> In his May 10, 2012 report, Dr. Dinenberg indicated that the restrictions of no bending, stooping, squatting, kneeling or climbing with additional restrictions that she could repetitively move her wrists for one hour daily and could push, pull and lift 20 pounds for two hours daily were based on the employment injuries.

The record indicates that appellant was working full duty at the time she stopped work in December 2005. The record also indicates that the physical requirements of the carrier position include carrying mail in shoulder satchels weighing as much as 35 pounds and loading and unloading sacks of mail weighing up to 70 pounds. The restrictions provided by Dr. Dinenberg clearly indicate that appellant could not meet those physical requirements. Appellant therefore established that she was disabled from performing the duties of the letter carrier position when she stopped work.

The record, however, is unclear regarding the period of disability due to the employment injuries. In his May 10, 2012 report, Dr. Dinenberg stated: "I do not feel that the claimant was totally disabled on December 1, 2005, but did have restrictions secondary to the accepted conditions beginning on that date." As noted above, when the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.<sup>13</sup> The case will

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<sup>9</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

<sup>10</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>11</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>12</sup> *Supra* note 5.

<sup>13</sup> *Supra* note 8.

therefore be remanded to OWCP to determine the period in which appellant would be entitled to disability compensation.<sup>14</sup>

### **CONCLUSION**

The Board finds this case is not in posture for decision regarding the period of disability in which appellant would be entitled to monetary compensation.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 24, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: February 1, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> The Board notes that at a July 27, 2009 hearing, appellant testified that, since she stopped worked at the employing establishment, she had been tutoring at home.